



August 27, 2002

Ms. Paula A. Jones  
General Counsel  
Employees Retirement System of Texas  
P.O. Box 13207  
Austin, Texas 78711-3207

OR2002-4775

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167712.

The Employees Retirement System of Texas (the "system") received a request for "documents or records containing" information about a former employee's salary, title, dates of employment, final annual salary, job performance evaluations, dismissal, demotion, promotion, or resignation. You inform us that you will provide some responsive information to the requestor but claim that certain information contained in the submitted documents is not responsive to this request or, alternatively, is excepted from disclosure under section 552.101 and 552.117 of the Government Code. We have considered your arguments and reviewed the submitted information.

You assert that information about the former employee's social security number, home address, and home telephone number is not responsive to the request at issue because "the request asks for salaries, titles, and work performance rather than non-worked [sic] related information." However, the employee's personal information is part of the requested "documents or records containing" the various work-related information. We therefore find that the employee's personal information is responsive to the request.

We turn now to your argument regarding section 552.117 of the Government Code. Section 552.117 excepts from disclosure "information that relates to the *home address*, home telephone number, or social security number" and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. (Emphasis added.) Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). The former employee whose records are at issue made requests for confidentiality under section 552.024 prior to the date

on which the request for this information was made. Because the former employee timely elected to keep his personal information confidential, the system must withhold the employee's home addresses and telephone number and social security number, all of which we have marked.

We note that one of the submitted documents includes the former employee's personal post office box number. Because this address is not the employee's current or former "home address," it is not made confidential by section 552.117 and may not be withheld on that basis. See Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) ("The legislative history of section 552.117(1)(A) makes clear that its purpose is to protect public employees from being harassed *at home*. See House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)." (Emphasis added.)); see also Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality).

You also assert that the employee's personal information is protected by common law privacy. The doctrine of common law privacy is encompassed by section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common law privacy protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Id.* Having reviewed the remaining information, we conclude that none of it is protected by common law privacy. See Open Records Decision Nos. 478 (1987), 455 (1987). (absent special circumstances, names, addresses, and telephone numbers are not "intimate" information). Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code.

In summary, pursuant to section 552.117, the system must withhold the marked home address and telephone number and social security number. All other submitted information must be released. As our ruling on these issues is dispositive, we need not address your remaining arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

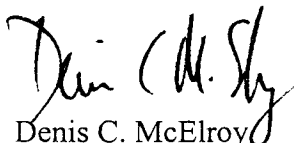
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis C. McElroy".

Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/seg

Ref: ID# 167712

Enc. Submitted documents

c: Mr. Arturo D. Rodriguez, Jr.  
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(w/o enclosures)